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IN THE
COURT OF APPEALS OF INDIANA

CHARLES RAY SELSER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0606-CR-482
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0503-FB-84

February 26, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Charles R. Selser ("Selser") pled guilty in Madison Circuit Court to causing death when operating a motor vehicle with a schedule I or II controlled substance in his body as a Class B felony and was sentenced to the maximum twenty-year sentence. He appeals, raising two issues:

I. Whether the trial court abused its discretion in sentencing him; and,

II. Whether his sentence is inappropriate in light of the nature of the offense and character of the offender.

We affirm.

Facts and Procedural History

On March 1, 2005, Selser was driving from Birmingham, Alabama, to Farmland, Indiana, with two passengers to inquire about carnival work. Their plan was to then drive to Selser's home in Clinton, Iowa. En route, the three smoked marijuana. As Selser drove through Madison County, Indiana, he encountered slick road conditions and lost control of his car. The car flipped and landed in a ditch. One of the passengers, Mary Goddard, was ejected from the car and died as a result of her injuries.

The State charged Selser with Class B felony causing death when operating a motor vehicle with a schedule I or II controlled substance in his body, Class C felony causing death when operating a motor vehicle while intoxicated, and Class C felony reckless homicide. Selser agreed to plead guilty to the Class B felony; in exchange the State dismissed the remaining charges. Under the terms of the plea agreement, the State made no sentencing recommendation.

At a sentencing hearing held on February 13, 2006, the trial court found as follows:

> Well, the aggravating circumstances…is that you have these two prior felony convictions, one of which is grand larceny. You got five [ ] years for that and then you got ten [ ] years for delivering cocaine and so those are the aggravators. The mitgators are that you pleaded guilty, you made an expression of remorse and you have some physical difficulties, which are really too bad.

Tr. p. 27. The court went on to find that the aggravating circumstances outweighed the mitigating circumstances and sentenced Selser to twenty years with ten years suspended to probation. Selser now appeals.

Discussion and Decision

Selser argues that the trial court abused its discretion in sentencing him to the maximum sentence for a Class B felony. Sentencing decisions rest within the trial court's discretion and are reviewed only for an abuse of discretion. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998).

Selser contends that his prior criminal convictions are not sufficiently weighty aggravators to support a maximum sentence. Selser's criminal history consists of convictions in the State of Iowa of criminal trespass, public intoxication, and grand larceny in 1976, possession of a handgun by felon in 1991, assault in 1990, and delivery of cocaine in 1992. Appellant's App. p. 11.

We recently addressed a similar challenge to the aggravating significance of criminal history:

> The Indiana Supreme Court has emphasized that "the extent, if any, that a sentence should be enhanced [based upon prior convictions] turns on the weight of an individual's criminal history." Duncan v. State, 857 N.E.2d

> 955, 959 (Ind. 2006). "This weight is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." Id. (quoting Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006)). "[T]he significance of a defendant's prior criminal history in determining whether to impose a sentence enhancement will vary 'based on the gravity, nature and number of prior offenses as they relate to the current offense.'" Prickett v. State, 856 N.E.2d 1203, 1209 (Ind. 2006 (quoting Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004)).

Howell v. State, 859 N.E.2d 677, 685 (Ind. Ct. App. 2006).

We believe Selser's criminal history is a sufficiently significant aggravating factor to support a maximum sentence. Selser's two prior felony convictions occurred in 1976 and 1992. While his most recent prior felony conviction occurred some fourteen years ago, we note that he received a ten year executed sentence. As such, we cannot conclude that the number of years since the conviction renders its aggravating weight insignificant. Therefore, the trial court did not abuse its discretion in sentencing Selser.

Next, Selser argues that his sentence in inappropriate. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. Here, the State acknowledges that "the nature of the offense itself is not particularly aggravated." Br. of Appellee at 9. However, in light of Selser's criminal history and continued use of marijuana, see Appellant's App. p. 14, we cannot conclude that his sentence is inappropriate.

Therefore, we affirm the trial court's decision to sentence Selser to the maximum term of twenty years.

Affirmed.

KIRSCH, C. J., and SHARPNACK, J., concur.